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COMMON OPERATING ELEMENTS OF THE US MINERAL LAWS

What does a working Mining Law need to do for it work? It has to do **four fundamental things**; initiate rights to the minerals, provide access to mineral lands, provide secure tenure and ensure diligent development of the minerals. Without these four fundamental principles the law can not accomplish what it's authors intended: the development of mineral resources.

There must be a rational and uniform mechanism for getting the mineral exploration and development process started, whether in the form of a lease, a claim or a sale. Once the rights to develop the minerals are established, the law has to provide the holder of those rights with legally enforceable access to lands the with mineral deposits.

The common objective for all of the minerals management laws is the environmentally sound development of publicly owned mineral resources. To do this requires capital and capital requires some secure and bankable form of tenure. In most places, development generally requires investment by someone whose money is taking a risk. Thus, the legally enforceable access rights must be followed by equally enforceable rights allowing any discovered deposits to be developed. Lastly, keeping lands available and preventing rank speculation profiteering means the law must set minimum levels of exploration and development to foster diligent development.

In the United States these fundamental principles translate into the **common operating elements** of the U.S. mineral laws for Federal Lands and Mineral interests; Land Use Planning, Deposit Delineation, Allocating the Rights, Recording/Awarding the Rights, Exercising the rights, Maintaining the rights, Reclamation & Termination of the rights. All of the U.S. minerals management laws which direct access to mineral rights share this common set of elements. The difference in the details.

Land Use Planning While not explicitly required in all of the U.S. mineral laws, the requirement for Federal land use planning is widespread in all of the mineral commodity programs due to Federal land manager's primary sources of authority, the Federal Land Policy and Management Act of 1976 and the National Forest Management Act of 1976.

Typically the question to be answered in the planning process is simply stated as, "Are the federal rights to the minerals to be made available for development, or is the area to be withheld from development?" This is the new paradigm for minerals development on Federal lands, as development in the past was simply a demand driven system. There is considerable variety in the levels of detail in planning demanded by the mineral commodity programs laws. The least amount of detail in land use planning is found in the hardrock sector, as the policy of the Federal government has been to let the industry do the exploration and assume the risk. In

contrast, increased levels of detail in land use planning are found in the leasing of oil, gas and the most detailed level is found in coal leasing.

Deposit Delineation This is a process that in some commodities is done entirely by the government as in the case of coal leasing. In the case of some leasable or salable minerals it is in conjunction with the potential developers of the minerals. In the case of some locatable and hardrock leasable commodities it is done entirely by the developers.

Allocating the Rights Allocating or awarding the rights varies by mineral commodity. The differing methods vary, ranging from near total government control of the allocation in competitive bidding, to a mixture of industry and government initiative in the noncompetitive sale and lease processes, and ultimately to a completely industry driven process in the locatable commodities. The latter process is essentially a "first in time -first in right" race to discover valuable minerals.

Recording/Awarding the Rights The awarding of the rights in the case of the leasable or the salable commodities is accomplished by the government issuance of a lease, or the awarding of a sale contract or permit. In the locatable commodities the awarding of the rights is done entirely by the industry through a recording process.

Exercising the Rights The exercise of the rights has increasingly come to mean the approval of a plan of exploration or development by a government agency. These plans take into consideration the impacts of the exercise of the rights on other resources and attempt to mitigate those impacts and seek to guarantee that the land surface will be restored to a usable condition when the exercise of the rights is done.

Maintaining the Rights To maintain any or all of the rights there is a requirement for due diligence, either through the performance of a required amount of work or the payment of holding fees (locatables), payment of rents and royalties (leasables), or the payment of the fair market value of the commodity produced (salables).

Reclamation & Termination of the Rights In all of the mineral commodity programs, there is a vehicle for termination of the rights when the exercise of those rights has been completed. In all cases this involves restoration of the land surface to some usable condition, either through reclamation or through conversion to a productive secondary use. In some commodities the termination requires the government to take an action accepting the termination or surrender of the rights. In others the termination is a simple abandonment of the rights by the holder of the rights with no action required by the government. The requirement to reclaim, however remains with the holder of the mineral rights.

Mining Law Reform

Background. From the earliest days of the Republic, the United States has followed the policy of reserving ownership to public lands known to contain certain valuable mineral deposits. To manage those reserved mineral lands the first Federal mining laws were leasing laws, mainly for lead. For a variety of reasons, the leasing programs created by the laws did not work as intended or were politically unpopular in the extreme. The leasing laws were repealed by Congress beginning in 1829 and thereafter in 1840s. They were replaced in the 1840s and 1850s with laws allowing disposal of some reserved mineral lands in cash sales. Most of these laws were specific only to the old Northwest Territory, Louisiana, Missouri, Arkansas and the Lake States.

In 1848, the United States acquired a vast new territory from Mexico. A vast, mineral rich area for which, from 1848 to 1866, there were no Federal mining laws. There was no legal access to the mineral rights that covered the mineral wealth. Recognizing the need for laws to ensure the right to the minerals, the miners of 1849 California gold rush wrote their own, drawing on a mixture of Cornish, German, and Mexican mining codes and traditions. Following this private initiative, the States and Territories enacted their own mining laws.

The Mining Law of 1872 represented the culmination of national policy debates, lasting from 1849 to 1872, as how best to manage the Nation's mineral wealth. The Lode Law of 1866 ended the debates about the form of the Federal law by adopting the codes found in the States, Territories, and Mining Districts. The Placer Act of 1870 added to the body of law by including the placer mining industry with the ambit of the law. The Act of May 10, 1872, modified and consolidated the provisions of these two Acts creating the fundamental framework of the law.

The Mining Law of 1872, <u>as amended,</u> embodies four fundamental principles: self-initiation of mineral rights, free access to and across Federal lands, security of title to the mineral deposits, and the concept of due diligence. These principles were derived from the practices found in the miner's codes. The Mining Law created a system which recognized the considerable risks in mineral exploration. In this system those risks were to be taken by those who search for minerals. Those who were successful in taking the risks were rewarded with ownership of the deposit, if they so desired. In return, the government, and the society was to receive benefits derived from the development of towns, mines, farms and the other infrastructure associated with mining.

Discovery of a valuable mineral deposit followed by proper location, recordation and maintenance of a mining claim vested the claimant with a constitutionally protected property right secured against uncompensated takings by all parties, including the Federal government. The mining claimant could develop the mineral deposit

royalties on the production, but paying all required Federal, state and local taxes on the profits from the production. If the mining claimant wished title to the valid mining claim it could be obtained through the filing of a mineral patent application.

Further amendments followed from 1872 to the present day. Significant amendments removed States and ultimately entire classes of minerals from the operation of the law, such as the Mineral Leasing Act and the Materials Act. Numerous technical amendments were likewise enacted. Further modifications, extensions and interpretations of the law followed in the State and Federal courts. The result is a body of Federal and State case law similar in nature to a "common law" system. Likewise, the nearly two decades of environmental legislation affecting operations conducted under the law have for all practical purposes further modified the mining law.

Minerals on Federal lands that are not subject to the Mineral Leasing Act of 1920, as amended (the energy and fertilizer minerals) or the Materials Act of 1947, as amended (sand, stone, gravel and other common construction materials), are subject to the provisions of the Mining Law of 1872, as amended. The rights to these minerals are initiated by the search for and the discovery of a deposit of valuable minerals followed by the location of a mining claim. Minerals subject to the Mining Law are all those that are not explicitly mentioned in either the leasing or the materials acts and include gold, silver, copper, mercury, lead, zinc, precious and semi-precious stones, and a vast array of industrial minerals.

Recent Mining Law Reform Activity

Since enactment of the Mining Law, there has been continual interest in modification of the law. Most of the early reform issues were the product of internal industry debates. Beginning in the 1950's, the discussions began to take on a concern for the environment and, by the 1970's, assumed a confrontational tone between environmental versus industry groups. The dichotomy continues.

Legislative Initiatives in the 101st Congress. Representative Nick Joe Rahall (D-WV), Chairman of the House Mining and Natural Resources Subcommittee of the Interior and Insular Affairs Committee, introduced H.R. 3866 during the 101st Congress, a new location based mining law strongly modeled on the provincial mining laws of Ontario, Canada. H.R. 3866 failed to repeal the existing mining law system, but none-the-less attempted to create a replacement system. It eliminated the search for a valuable mineral deposit or the discovery of a valuable mineral deposit as the rationale for the location of a mining claim. The rights to minerals are initiated by the mere location of a mining claim coupled with a diligence scheme. H.R. 3866 did not impose a royalty and used a combination of fees to raise revenue. H.R. 3866 did not emerge from committee.

Senator Dale Bumpers (D-AR) introduced S. 1126 in June 1989, a leasing system that used location and patent system language. There were three levels of activity under S. 1126, prospecting, exploration, and mining. S. 1126 established a "casual use" level of actions on land open to location and requires prior notification of the surface agency before prospecting begins. Work beyond casual use could only be done on an exploration claim, which cost $100 per claim to record. Mineral production was prohibited from the claims until the patent has been issued. The Secretary was to issue a patent if the claim contains a commercially viable hardrock deposit. An annual fee of $5/acre and an 8 percent overriding royalty of production value are required. Patents would revert to the United States if there is no production within 15 years, with allowance for market conditions.

Mining Law Reform in the 102nd Congress.

House and Senate Actions in the First Session:

Senator Bumpers and Representative Rahall continued to pursue mining law reform in the 102nd Congress. On February 2, 1991, Senator Bumpers introduced S. 433, "Mining Law Reform Act of 1991". On February 7, 1991, Representative Rahall introduced H.R. 918, "Mineral Exploration and Development Act of 1991".

The system for acquiring rights to mineral title proposed by H.R. 918 did not differ significantly from its predecessor in the 101st Congress. Aspects of it remained closely modeled on Ontario mining law. The system for acquiring rights in S. 433 was modified, making it more like H.R. 918 self initiation system. Significant changes were made in both bill to the titles that addressed environmental protection, land use planning, and abandoned mined land reclamation. Both bills eliminated patents, the distinction between lode and placer mining claims, and establish holding fees. Two differing diligence systems are proposed by the bills. H.R. 918 uses an increasing set of expenditures by the claimant to enforce diligent development. S.433 utilized an increasing holding fee, coupled with a sunset provision that was contingent on actual production. In S. 433 , the holding fees were to be replaced with a 5 % royalty on gross income from production once production commenced.

House in the 2nd Session

In 1992, HR 918 was modified by the House Interior Committee. The bill retained the provisions that replaced discovery of a valuable mineral deposit with mere conformance with administrative acts and the performance of diligent development work or payment in lieu of work. The bill created an expansive reclamation requirements based in large part of the Surface Mining Control and Reclamation Act (SMCRA), adding a detailed operations approval process. The bill required the use of technologic and economic unsuitability criteria, in part based on SMCRA, in land use planning. The amended bill created a rental fee and penalty system intended to

provided for an abandoned mined land reclamation fund and imposed a gross production royalty to be divided between the fund, the States and the Federal Treasury.

H.R. 918 emerged from committee with amendments, including an 8% gross royalty on the value of minerals produced from claims located (but not those converted) under the bill. Thus all existing production from mining claims was not subject to a royalty. The amendments also included an exemption from the diligence fees for small scale claim holders. This latter amendment, along with the diligent development offsets against rentals allowed by the bill (which were of significant benefit to those with production) effectively eliminated any potential for the generation of revenue. Debate on H.R. 918 was taken up by the House in the last hours of the 10nd Congress, producing spectacular legislative debate and floor maneuvers. The debate was focused mainly on the issue of royalties, and a proposal to increase gross production royalties to 12.5 percent. The bill did not come to a vote before the Congress adjourned.A final vote on the bill by the House did not occur prior to adjournment.

Senate Actions in the 2nd Session

In 1992, S. 433 never emerged from committee. The Senate, by contrast considered an amendment to S. 433 that reduced the requirements of the previous version. Senator Bumpers circulated a draft version of a proposal that completely abandoned the contents of S. 433. It proposed to continue the existing situation with a sunset provision for claims that was based on the initiation of production. There was no provision for a royalty. The proposal was briefly discussed, but never came to a vote in the subcommittee.

The Senate Energy and Natural Resources Committee declined to act on the proposed amendment. In the Appropriations Committee, western Senators, in response to a proposed mineral patent moratorium from Senator Bumpers, attached three amendments to the Interior Appropriations bill HR 5503 that dealt with mining law reform issues. One of the three amendments addressed the price paid for mineral patents, requiring payment of fair market value for the land surface, restricting the post-patent land uses allowable, provided for reversion to the United States if the lands are used for non-authorized uses, and provided for continued Federal reclamation requirements in the complete absence of State requirements. Another amendment provided for a $100 holding fee with a small miner's exemption. Yet another provided for the posting of a financial guarantee to ensure reclamation.

Actions in Conference Committee

In conference during the week of September 20, 1992, the Senate conferees agreed to a House proposal. In that proposal, the House agreed to give up on the mineral patent moratorium, give up grazing fee increases, and the House agreed to the Senate formula on

apportioning the administrative costs of collecting mineral royalty revenues. In return the Senate gave up the fair market value and bonding amendments, and kept the small miner's exemption to the holding fee. The conference agreed to a further modification of the exemption with the adoption of language on tests involving gross production or actual work tied to a notice or a plan and limiting the 10 claims to those held by a family. The holding fee provisions became effective with the President's signing of the Interior Appropriations Act for the Fiscal Year 1993.

Mining Law Reform in the 103nd Congress.

Senator Bumpers and Representative Rahall continue to pursue mining law reform in the 103nd Congress. Senator Bumpers introduced S. 257, "Mining Law Reform Act of 1991". Representative Rahall introduced H.R. 322, "Mineral Exploration and Development Act of 1991". However, there are now two competing bills with industry support in both houses of the Congress. Senator Craig (R. ID) introduced S. 775 and Representatives Orton (R UT) and Vucanovich (R NV) introduced H. R. 1708.

H.R. 322 and S. 257 are similar bills. These bills, in form and substance, is similar to H.R. 918 as it was amended and debated on the House floor late in the final session of the 102nd Congress. However, the royalty provisions contained in the bills are set at 8% of gross income from production for all current and future production and there is no small scale miner's exemption on annual rentals. S. 257, in contrast to H.R. 322 does not contain any provision to reduce rental fee by diligent development expenditures. S. 257 also allows for the suspension of payment of the annual rental fee upon the payment of the royalty if it is in an amount equal to or greater that the applicable annual rental fee. H.R. 322 and S. 257 both contain an expansive reclamation requirements based in large part of the Surface Mining Control and Reclamation Act (SMCRA). Both bills add a detailed operations approval process. The bills require the use of technologic and economic unsuitability criteria, in part based on SMCRA, in land use planning. The bills use royalties, rental fees and revenues from the penalty system to provide funding for an abandoned mined land reclamation fund. The gross production royalty is to be divided between the fund, the States and the Federal Treasury.

S.775 and H.R. 1708 are similar bills. Both bill contain provisions for a royalty set at 2% of the value at the mine mouth. The royalty is applicable only to those mining claims located after the date of enactment of the bills. These bills establish a mining claim rental fee as well as a recordation fee, however there is a reduction for small scale claim holders with 10 to 50 claims and a complete waiver for holders of fewer than 10 claims. The large number of mining claimants holding 10 or fewer claims ensures that at least 75% of mining claimants would be exempt from the reduced rental fee.

S. 775 and H.R. 1708 establish a Hardrock Mining Royalty Review

Commission to be supported by the Secretary of the Interior's budget. The commission shall be created and shall be comprised of 9 members who have experience. Not later than 18 months after the date of enactment of these Acts, the Commission shall review the effect of the royalty provisions on the industry and make recommendations to the Secretary and to Congress. The Commission will determine economic effect of different royalty rates and differences between various minerals or means of production, and estimate the long term effect of different royalty rates on competition.

Both bill make no substantive changes in the location patent system, allowing for the issuance of mineral patents to mining claimants upon payment of fair market value, exclusive of the value of the mineral deposit. Such patents are also subject to the reservation of a royalty to the government. Unlike S. 775, H.R. 1708 includes a provision for reversion of patents used for non-mining purposes.

S. 775 and R.R. 1708 address surface management of mining claims during operations, require mandatory financial guarantees and address illegal mining claim occupancy. The bill apparently provide for the Secretary of the Interior to assume responsibly for all exploration and mining operation on the lands within the National Forest System. The bills attempt to address the issue of common varieties and to allow for sale of mineral materials from mining claims. The former provision fails to sufficiently resolve the issue. Both bills provide for an Abandoned Hardrock Mine Land Reclamation Fund, however, the levels of funding available for the fund are significantly smaller than that found in the competing legislation.

S.775 has been passed by the Senate with the support of the Chairman, Senator Bennett-Johnston (D. LA). The Senator has decided to use S. 775 as the vehicle for conference between both houses. The House has delayed action on H.R. 322 until the Senate actions on S. 775. The House then amended H.R. 322 an passed the amended bill on September 18, 1992. Both houses of the Congress expect to make modifications in conference committee. A summary of the bills to be considered by the conference committee follows along with a summary of the existing mining law system.

Summary of Mining Law Reform Legislation S. 775 & H.R. 322

The Existing Mining Law System

Rights are established by the discovery of a deposit of valuable minerals and the location, recordation and maintenance of a mining claim.

Over the years the Department and the courts have developed tests for five critical elements which define a valid and patentable mining claim:

Discover a valuable mineral deposit.

Locate the claim boundaries on the ground.

Properly record the location with the County and the BLM.

Perform annual assessment work or make payment of annual rental fees.

Demonstrate possessory title for mineral patent.

Both Bills

Retain the mining claim location system.

Establish a hard rock abandoned mine land (AML) reclamation program and a funding mechanism to support the program.

Revise the mineral materials definitions to eliminate uncommon varieties to make all mineral materials salable.

Repeal the Building Stone Placer Act.

Allocate revenues from royalties, fees and payments:

S 775 - 2/3 to Treasury and 1/3 to States
HR 322 - 100% to AML fund.

Allow for the indexing of established dollar amounts for fees, rents and charges using the CPI; S 775 every 5 years and HR 322 every 10 years.

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A sixth critical element arose, particularly for the mining claimant who sought to conduct surface operations on mining claims, with the development of the Federal land managers' surface management programs. These programs are designed to minimize the environmental impacts of mining on the Federal lands and resources.

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S 775 (Craig)

Location
No changes in present location procedures the States retain their current role in location and determination of possessory rights among rivals.

Recordation
Establishes a recordation fee of $25/claim. The State role in recordation remains unchanged.

Discovery
Discovery of a valuable mineral retained as a rationale for the location of a valid claim.

Maintenance
Retains the current $100/claim per year fee. It allows for a reduction of the fee to $25/per claim per year for 10-50 claims and outright elimination for 0-10 claims.

Federal royalty is established at 2% mine mouth value of production. Establishes a Hardrock Mining Royalty Review Commission.

Surface Management
Operations plans are required for all activities. Creates an enforcement program. Retains existing reclamation standards. Requires 100% bonding and allows for phased release of bonds. Allows no non-mining residential occupancy and requires occupancy to be approved as part of a plan. It applies Federal reclamation laws to subsequently patented claims if no state rules exist (mainly affects Arizona).

Mineral Patents
Patenting is retained, but future patenting must pay fair market value (FMV) for surface, exclusive of the mineral deposit. The 2% mine mouth royalty is reserved to the U.S. in all future patents. Existing mining claims with a pending mineral survey application or a patent application filed within 6 months of the enactment will not be subject to the FMV or patent requirements.

HR 322 (Rahall/Lehman)

Location
Creates a unitary mining claim which eliminates the distinction between lodes, placers, or millsites. It specifies location practices and eliminates the existing state role but retains use of the Federal and State Courts to determine possession among rivals. Specifies lands closed to the operation of the law. Specifies requirements for conversion of existing mining claims.

Discovery
Eliminates discovery as a rationale for a valid claim and eliminates extralateral rights. Allows the Secretary to examine a claim to determine if it is being held for mining purposes, including an examination of the "good faith" of the location. Claims not held in good faith or for mining purposes can be declared null and void.

Recordation
Establishes a $25 location fee and only allows for Federal recordation of claims.

Maintenance
Establishes maintenance fees of $200/claim per year on new claims, retains $100/claim per year for converted claims. Allows the Secretary to waive maintenance fees for persons holding 10 or fewer claims.

Establishes a Federal royalty for production is established at 8% of net smelter returns (as defined by 26 USC 613(c)[1]).

Surface Management
Requires separate plans of operations for exploration and for mining. Specifies the determinants to use in determining the bonds amounts. Specifies bond release procedures. Established minimum reclamation standards. Allows for the use of state law if more stringent. Requires a general review of public lands for unsuitability for mining and where reviews remain uncompleted, upon individual plan receipt. Requires significant public participation. Allows for citizen suit. Allows for the establishment of user fees sufficient to capture all costs associated with program operations. Specifies the details of the monitoring, inspection and enforcement program.

Mineral Patents
Patents eliminated unless first half final certificate (FHFC) is achieved by the date of introduction of the bill.

For Your Information; Some Details About America's Mining Laws

Private and Public Mineral Ownership in the United States

Broadly put there are two classes of mineral rights in the United States (U.S.); private and public. Unlike many countries, the U.S. does not lay claim to all minerals within its borders. The Federal agency charged with managing the nation's Federal mineral rights is the Bureau of Land Management (BLM). It administers about 272 million acres of multiple use lands (surface and minerals) owned by the Federal Government and the Federal mineral resources underlying another 302 million acres of lands administered by other governmental agencies or owned by private interests.

The U.S. owns about 29 percent of all the land lying within its borders. Almost all of this land lies in the eleven western States and Alaska. Scattered tracts of Federal mineral rights are found in the eastern States along with some Federal Surface in Parks, Refuges, National Forests, and Corps of Engineers project areas a broad belt of reserved Federal mineral stretches along the Rocky Mountain front from Montana to New Mexico. This pattern of ownership is a mostly a function of our English colonial heritage and the subsequent westward movement settlement.

Under many of the colonial charters, the rights to the "matters of the soil" along with the land surface were freely granted by the King to the founders of the colonies. Since the 1600's the English legal custom was to link surface and subsurface ownership. There was in English legal custom, however a reservation of gold and silver, the "royal" metals, to the Crown.

The colonial governments in turn granted lands to individuals and associations, on occasion reserving an irregularly collected quitrent. Thus, in the original thirteen colonies "fee" simple estates which included mineral and surface rights were vested in private individuals. Transactions separating the private mineral rights from the surface rights shortly followed. In at least one of the Eastern States a royalty based on the old reservation of the royal metals is still claimed by the State government.

To aid in the creation of a national government under the Articles of Confederation the western land claims of the colonies were ceded to the central government. The lands formed the original public domain which was expanded by the succeeding Constitutional government through the acquisition of lands by treaty, purchase and conquest. The public domain was, through land sales, viewed as a significant source of revenue for the Federal government.

For Your Information; Some Details About America's Mining Laws

An exception to the common law tradition of minerals ownership is found in one State, Louisiana, the territory of which was acquired by the U.S. by purchase from France. In Louisiana, the civil law tradition which has been in part incorporated into the State codes, does not generally permit the separation of private mineral and surface estates. As a general rule State laws have no effect on the Federal lands and mineral interests still in Federal ownership.

The Public Lands sold by the government were generally offered as fee simple estates, that is the surface and mineral estates were both sold as a package. The earliest land sales included a reservation of one third of gold, silver, copper and lead mines to the U.S. In the early 1800's, lands known to be valuable for certain minerals were reserved from sale under the land laws, a practice which became the general policy of the U.S. Thus, from 1785 to 1914 the sale of lands under the land laws was restricted to not known to be valuable for mineral development.

Beginning in 1914 and ending with the congressional determination to cease all general Public Land sales in 1976, lands were generally sold with a reservation of minerals to the U.S. The principle form of sale during this period was the stock-raising homestead, a form of homestead expressly developed for those semi-arid areas where the agricultural homesteads were not possible. There is a belt of such sale areas extending along the Rocky Mountain front from New Mexico to Montana.

For Your Information; Some Details About America's Mining Laws

Which Mineral Law Applies to What Mineral?

There are three broad categories of minerals found on Federal lands. The categories are based on the manner that the rights to develop the minerals are granted by the Federal Government. The three categories are; locatable, leasable and salable.

Locatable Minerals

Locatable mineral rights are initiated by the search for and the discovery of a deposit of valuable minerals followed by the location of a mining claim. Minerals subject to the Mining Law of 1872, as amended, are all those that are not explicitly mentioned in either the leasing or the materials sales acts. They include all of the precious metals, the base metals, ferrous metals, light metals, precious and semi-precious stones, some building stones, and a vast array of industrial minerals. Self initiation of rights was a form of accomodating of the extreme risks to capital investment made during the exploration for and development of the mineral deposits.

Leasable Minerals

The energy and fertilizer minerals on Federal lands that are subject to the Mineral Leasing Act of 1920, as amended. These broadly bedded and geologically "simple" mineral deposits include oil, gas, coal, geothermal energy, tar sands, native asphalt (including gilsonite), oil shale, sulfur (in New Mexico and Louisiana) sodium minerals, potash and phosphate. Some lands containing hardrock minerals are also leasable if the lands were acquired by the government. The leasable minerals are subject to the government's discretion to offer for lease the mineral rights competitively or non-competitively. The lease terms generally include rents and provisions for royalties to be paid to the U.S.

Salable Minerals

The common construction materials, ordinary clay, common cinders, sand, stone, and gravel are sold to the user under the provisions of the Materials Act of 1947, as amended. The sale terms are usually based on the fair market value of the material as it is found in the ground before any additional value is added by extracting, crushing, screening, classifying or stockpiling. Certain governmental entities and non-profit organizations may be granted free use of mineral materials.

Leases, Sales and Mining Claims

Leases are applicable mainly to the energy (oil, gas, coal and geothermal), fertilizer minerals (potash and phosphate), sodium minerals (trona) and to those few circumstances when hardrock minerals are leased. A similar system, material sales exists mainly for construction materials such as sand and gravel.

Leases generally require the payment of bonuses, rents and royalties based on a portion the value of the minerals produced. Leases may be issued on a competitive or a non-competitive, self-initiating basis. Sales on the other hand, are generally based on the fair market value of the in- place material and are the product competitive bidding or negotiation.

Leases and sales generally contain general terms and conditions which reflect the statutory and regulatory requirements and site specific conditions applicable to the leasehold or sale area itself. In addition, standards of performance and restrictions are further expanded upon during the review and approval of a plan of development for the leasehold or the sale area. The mineral material sale is consummated by a document that is actually referred to as a contract for sale. The terms and conditions of leases are agreed to by the leaseholder as offered by the U.S., making the lease, in essence, a contract between the U.S. and the leaseholder.

In the case of mining claims, the rights are self-initiated by the mining claimant through the act of locating the mining claim. The terms and conditions for maintaining the claims are set by law and implemented by regulation. These terms take the form of diligent development expenditures or payment of a rental fee as appropriate. No royalties are collected by the government, but income generated by production is subject to Federal and State income taxes. Any failure to meet the terms and conditions for maintaining the claims results in forfeiture of the claims. The performance standards for preventing unnecessary or undue degradation of the surface resource are set by regulation and are applied as proposed operations are reviewed and approved. To the extent that the application of the standards are negotiated and agreed to, an informal "contract" between the Federal land manager and the mining claimant exists.

For Your Information; Some Details About America's Mining Laws

The History of the Federal Mining Laws

From the earliest days of the Republic, the U.S. had a policy of reserving ownership to public lands known to contain certain valuable mineral deposits.

To manage those reserved mineral lands the first Federal mining laws enacted by the Congress were leasing laws, mainly for lead and salt. Most of these laws were specific only to the states that made up the old Northwest Territory (Ohio, Illinois, Michigan and Indiana), Louisiana, Missouri, Arkansas and the Lake States (Wisconsin and Minnesota). For a variety of reasons, the leasing programs created by the laws either did not work as intended or were politically unpopular in the extreme. Congress beginning in 1829 and thereafter in the mid-1840s repealed the leasing laws. They were replaced in the 1840s and 1850s with laws allowing disposal of the reserved mineral lands in cash sales to private individuals.

In 1848, the U.S., by the Treaty of Guadalupe Hidalgo, acquired a vast new territory from Mexico. A vast, mineral rich area for which, from 1848 to 1866, there were no Federal mining laws to provide legal access to the mineral rights that covered that mineral wealth. The Federal policy of reserving mineral lands quickly collided with the complete lack of laws to manage those rights.

Recognizing the need for some form of law to ensure orderly access to the mineral rights, the miners of 1849 California gold rush wrote their own mining codes, drawing on a mixture of both the earlier Spanish Colonial and the existing Mexican mining codes, the mining traditions of the American midwestern and southeastern states, and those of Germany and Cornwall. Following on the directions created by the private initiative of the miners, the States and Territories began enacting their own mining laws.

The Mining Law of 1872, represented the culmination of national policy debates, lasting from 1849 to 1872, as to how best to manage the Nation's mineral wealth. The debates centered on disposal through cash sale of the land or the sanctioning of the existing situation. Leasing was not considered an option given it's failure earlier in the century. The ultimate form of the Federal mining codes was set by congressional enactment of the Lode Law of 1866.

The lode law of 1866 ended the debates about the form of the Federal law by adopting the codes found in the States, Territories and Mining Districts. The law embodied four fundamental principles: self-initiation of mineral rights, free access to and across Federal lands, security of title to the

mineral deposits and the concept of due diligence. These principles were derived from the practices found in the miner's codes. The Placer Act of 1870 added to the body of law by including the placer mining industry within the ambit of the law. The Act of May 10, 1872, modified and consolidated the provisions of these two acts and finished the creation the fundamental framework of the law.

Further amendments followed from 1872 to the present day. Significant amendments removed States and ultimately entire classes of minerals from the operation of the law, such as the Mineral Leasing Act of 1920 and the Materials Act of 1947. Numerous technical amendments were likewise enacted. Further modifications, extensions and interpretations of the law followed in the State and Federal Courts. The result is a body of Federal and State case law similar in nature to a "common law" system. Likewise, the nearly two decades of environmental legislation effecting operations conducted under the law has for all practical purposes further modified the mining law.

For Your Information; Some Details About America's Mining Laws

Administration of the Mining Law.

Administration of the Mining Law was given to the Commissioner of the General Land Office (GLO). Created by the Congress in 1812, the GLO was responsible for all matters relating to the Public Lands of the United States. The GLO assumed responsibilities for the minerals owned by the United States. with the passage of the first location laws in 1866. Administration of the Mining Law now rests with the Director, Bureau of Land Management (BLM). Created in 1946 by the merger of the General Land Office and the Grazing Service, BLM is the successor agency to the two agencies' public land and minerals responsibilities. The Assistant Secretary for Land and Minerals Management supervises the BLM, the Mineral Management Service (MMS), and the Office of Surface Mining and Reclamation Enforcement.

The BLM is responsible for managing the surface resources and the mineral resources on approximately 110 million hectares of multiple use lands owned by the Federal government - about one-eighth of the land in the United States - and the mineral resources underlying another 122 million hectares of lands administered by other governmental agencies or owned by private interests. Most of the lands administered by the BLM are located in the 11 western States: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. Public land resources managed by the BLM include energy and minerals, timber, livestock forage, fish and wildlife habitat, wilderness, recreation, and archaeological and historical values.

In managing these lands the BLM performs a wide variety of functions including but not limited to inventorying resources, preparing regional and project specific plans, conducting land surveys, issuing leases and other use authorizations, enforcing permit conditions, designing and constructing roads and other improvements, and monitoring resource conditions. These management functions are usually performed by interdisciplinary teams of resource specialists and other BLM professionals. They are conducted in coordination with other Federal agencies and with State, Indian Tribes, and local units of government and frequently with the active participation of the local public, land users, and other effected interests.

The BLM is headquartered in Washington, D.C. It has regional, district and area offices throughout the western part of the United States. It has several offices in the eastern part of the United States to administer the scattered public and acquired Federal mineral interests in that part of the country. That office likewise has a significant record keeping role for the original land ownership records inherited from the GLO. BLM also operates a research institute, a training center, and a fire fighting center.

For Your Information; Some Details About America's Mining Laws

For further information regarding energy and mineral resource management, please write to:

Assistant Director, Energy and Mineral Resources
Bureau of Land Management
U.S. Department of the Interior
Washington, D.C. 20240.

For Your Information; Some Details About America's Mining Laws

Elements of the Mining Law

The Mining Law of 1872, as amended, embodies four fundamental principles: self-initiation of mineral rights, free access to and across Federal lands, security of title to the mineral deposits and the concept of due diligence. These principles were derived from the practices found in the miner's codes, and ultimately incorporated in the law by the Congress.

The law creates five types of claims and sites: lode mining claims, placer mining claims, tunnel sites, dependent mill sites, and independent mill sites.

There are five operating elements to the law, discovery, location, recordation, maintenance, and title transfer. Of these five, discovery is the most important and is the point at which the prospector self initiates rights under the law.

Discovery is the source of all succeeding rights under the law. Discovery has come to be defined as the disclosure of a deposit of valuable minerals of quantity and quality such that a person of ordinary prudence would be justified in the expenditure of means and effort in the reasonable prospect of success in developing a valuable mine. Discovery is essentially a test of the economic viability of an ore body. A claim supported by a discovery is property in the fullest sense and is good even against the government.

Location is the act of marking the claim boundaries on the ground, followed by the proper recordation of the interest with the proper state and Federal officials. Maintenance of the rights to a mining claim are ensured by the annual performance of a work on the claim or payment of appropriate rentals. Generally, the work performed must be such that it will lead to the removal of ore from the claim to qualify as annual work.

Title transfer occurs when and if a mining claimant seeks clear and unencumbered title to the lands that contain the deposit of valuable minerals. There is no requirement to apply for a patent to the lands and mining may proceed without a patent. However, when a mining claimant demonstrates a discovery and all other matters related to the claim are shown to be proper, a patent must issue. The test for a patent is the same as the test of discovery. After the issuance of the patent, the lands and the mineral deposits, subject only to a few legislatively required reservations, are private lands.

Managing Exploration and Mining on BLM Lands

The BLM is responsible for managing the development of locatable minerals on public lands under the Mining Law of 1872, as amended. The Federal Land Policy and Management Act of 1976 (FLPMA), and the BLM surface management regulations developed pursuant to FLPMA, provide the regulatory basis by which the BLM must ensure that all mining activities on public lands are conducted in a manner which minimizes environmental degradation. All surface disturbing activities related to "hardrock" mining are subject to BLM surface management.

The regulations which the BLM uses to ensure that exploration and mining are sustainable uses on public lands are based on laws produced by the 1960's and 1970's congressional debates on the ultimate disposition of the remaining, mostly arid lands within the public domain. The FLPMA is now the fundamental public land management authority for the BLM, requiring the BLM to manage the public lands so as to prevent unnecessary or undue degradation. Regulations to this effect are found in Title 43, Code of Federal Regulations. Subpart 3802 regulates operations on public lands under wilderness review. Subpart 3809 regulates operations on all other public lands administered by the BLM.

In addition to BLM surface management regulations, exploration and mining activities conducted on public lands must also comply with all applicable Federal, State, and local regulations. Operators have to obtain approvals from the appropriate regulatory agencies for water, air, cultural, wildlife, and other resources and activities. The number and nature of the approvals will depend upon the applicable Federal, State, and local regulatory statutes. This may lead to an extensive list of permits required for an operation.

Not all western States have reclamation laws. The existing State mining and reclamation regulations vary; however, most States apply their laws to all lands, whether private, State, or Federal within their borders. To be applicable to Federal lands, the stringency of State reclamation standards may be equal to or greater than Federal standards. In cases where the stringency of the State regulations differs from that required by Federal law, the more stringent requirement takes precedent on public lands. Cooperative agreements are used between the State and BLM to clarify differences in policies, procedures, standards, and responsibilities.

The BLM surface management regulations, promulgated in 1981 and 1983, established three levels of operation: casual use, notice level, and plans of operations. All such surface disturbing activities are subject to the requirement to conduct operations in a manner which prevents unnecessary or undue degradation of

the public lands. Additionally, all such activities are required to perform reasonable reclamation of the disturbed area as concurrently as practicable with mining activity in order to ensure that unnecessary or undue degradation does not occur.

Casual use (activities ordinarily resulting in negligible disturbance) and notice-level (disturbance of 5 acres or less) activities do not require prior approval by BLM unless conducted in certain special areas (e.g., Wilderness Study Areas, Designated Wilderness, Areas of Critical Environmental Concern, designated and proposed Wild and Scenic River corridors, portions of the California Desert Conservation Area, lands closed to Off Road Vehicle usage). Proposed activities which disturb more than 5 acres or are located in special areas are required to submit a plan of operations for BLM review. The BLM must analyze the environmental impacts of the proposed activity prior to approval of a plan of operations. All surface disturbing activities are subject to BLM field monitoring in order to ensure that unnecessary or undue degradation does not occur.

The surface management regulations are supplemented in part by the other laws including the Wilderness Act, the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act (RCRA). The existing regulatory framework created since 1970, by both the public land laws and environmental laws, provides additional controls on the impacts of exploration and mining. The federal land and minerals managers can, under the existing regulatory framework, address most environmental concerns associated with mining.

Managing Operations on Federal Minerals - Private Surface

The general National policy of the retaining ownership of the surface and subsurface of mineral lands, was modified in the period from 1909 to 1916. A series of Acts allowed for the splitting of the Federal mineral and surface estates, with the mineral estate being retained by the United States. The Acts were written after government geologists classified large tracts of land as valuable for phosphate and coal. These vast tracts were therefore closed to homesteading.

The Congress allowed the State and individuals to receive title to the surface estate but reserved the rights to all classes of minerals to the United States. These Acts allowed the United States to retain a paramount right of entry for the development of the mineral resources. Before entry on to the lands any party with the mineral rights, other than the United States, was required to furnish an approved bond to the Secretary of the Interior as security for the payment of all damages to the crops or improvements from which could result from prospecting or mining operations.

When mineral development occurs on the lands, the Federal government regulates leasable and salable mineral operations to ensure compliance with the Federal environmental laws and to ensure maximum economic recovery of the resource. As no royalties are collected on hardrock development, management of the operation is left to the operator, subject to Federal and State environmental and mine safety laws. Reclamation goals and objectives for locatable, leasable and salable operations are determined in negotiations between the mineral operator and the land owner, subject to the provisions of any State reclamation laws or regulations. The BLM determines the sufficiency of the bond amount and holds the bond in case of default by the mineral operator.